

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DANTE PERSON,
Petitioner,

Case No. 1:10-cv-35

Judge Timothy S. Black

v.

WARDEN, WARREN
CORRECTIONAL INSTITUTION,
Respondent.

**ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND THE JUDGMENT (DOC. 16)**

This civil action is before the Court on Respondent's Motion to Alter or Amend the Judgment (Doc. 16). Petitioner has not filed a response in opposition, and the time for doing so has now passed.

On December 19, 2011, this Court issued an Order (Doc. 14) adopting Magistrate Judge Karen L. Litkovitz's Report and Recommendation (Doc. 10) and granting Petitioner a writ of habeas corpus pursuant to 28 U.S.C. 2254 (Doc. 1) with respect to Ground One, which alleged that Petitioner was multiply punished for the same offense in violation of the Double Jeopardy Clause when the trial failed to merge his two felonious assault convictions.

Pursuant to Fed. R. Civ. P. 59(e), a party may file a motion to alter or amend a judgment within 28 days of the entry of the judgment. A court may grant a motion to alter or amend judgment only if there was "(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir.2005).

Accordingly, Respondent filed its Motion to Amend or Alter the Judgement on December 21, 2011.

Respondent argues that the Report and Recommendation demonstrates a manifest error of law because the Magistrate Judge gave insufficient deference to the determinations of the state courts and failed to recognize that the two felonious assault convictions were based on separate acts with separate animus. (Doc. 16 at 9).

Respondent further emphasizes the “unique facts” of this case, arguing that “the only reason there was only one shot is because the gun jammed the second time and the second bullet never discharged.” (*Id.*). Respondent raised these issues in its Objections to the Magistrate Judge’s Proposed Findings and Recommendation (Doc. 11), which this Court subsequently overruled. (*See* Doc. 14). Respondent’s Motion demonstrates its continued disagreement with the reasoning of the Magistrate Judge and this Court, but simple disagreement fails to meet the high threshold necessary for reconsideration.

Accordingly, Respondent’s Motion to Alter or Amend the Judgment (Doc. 16) is **DENIED.**

IT IS SO ORDERED.

Date: 7/23/12

s/ Timothy S. Black
Timothy S. Black
United States District Judge